

2:11 pm, Aug 13, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FREEDOM MORTGAGE CORPORATION,

Plaintiff,

-against-

ADOPTION ORDER

2:18-cv-3306 (ADS) (SIL)

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE

NICCA JETT, BANK OF AMERICA, N.A.
SUCCESSOR BY MERGER TO BANK OF
AMERICA, F.S.B., NASSAU COUNTY
CLERK,

Defendants.

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APPEARANCES:

Gross Polowy LLC

Attorneys for the Plaintiff

900 Merchants Concourse, Suite 412

Westbury, NY 11590

By: Stephen J. Vargas, Esq., Of Counsel.

SPATT, District Judge:

On June 6, 2018, the Plaintiff brought a diversity action against Bank of America, N.A., successor by merger to Bank of America, F.S.B. (“Bank of America”), Nicca Jett, and the Nassau County Clerk (“the Defendants”), seeking, inter alia, to foreclose on its mortgage encumbering property located at 2697 Milburn Avenue, in Baldwin, New York 11510 (“the Subject Property”). It also alleged that Defendants Bank of America and the Nassau County Clerk claimed an interest or a lien in the Subject Property that was prior and adverse to the Plaintiff’s mortgage; thus, the Plaintiff sought to discharge those prior and adverse liens.

On July 13, 2018, after the Defendants failed to answer or otherwise respond, the Plaintiff requested a certificate of default against the Defendants. The Clerk of Court entered a default against the Defendants on July 20, 2018. On August 9, 2018, Defendant Bank of

America disclaimed its interest in the action. The other Defendants have not responded to the entry of default.

On September 19, 2018, the Plaintiff filed the present motion for default judgment and a judgment of foreclosure and sale against the Defendants, and requested that the Court appoint a referee to effectuate a sale of the Subject Property. The next day, the Court referred the motion to United States Magistrate Judge Steven I. Locke for a Report and Recommendation as to whether the motion for a default judgment and judgment of foreclosure and sale should be granted, and if so, whether (a) a referee should be appointed, and (b) damages should be awarded.

On May 23, 2019, Judge Locke issued the Report and Recommendation (“R&R”), recommending as follows:

[T]he Court respectfully recommends that Freedom Mortgage’s motion for default judgment be granted in part and denied in part, and that Plaintiff be awarded against Jett: (i) \$398,474.48 for the Unpaid Principal Balance on the Note; (ii) \$24,803.67 in accrued interest, plus *per diem* interest of \$43.67 until judgment is entered, and post-judgment interest pursuant to 28 U.S.C. § 1961(a); and (iii) \$1,020.00 for fees and disbursements in connection with the filing fee in this action, the fee for serving the Summons and Complaint upon Defendants and the Notice of Pendency filing fee. The Court further recommends that Freedom Mortgage’s requests for: (i) pre-acceleration late charges; (ii) reimbursement for hazard insurance, taxes, property inspections and preservation; (iii) fees and disbursements in connection with paid-for searches and the tax map verification fee; and iv) attorney’s fees be denied without prejudice and with leave to renew upon the submission of the appropriate supporting documentation. Finally, the Court recommends that an Order similar to Plaintiff’s Proposed Judgment of Foreclosure and Sale, but consistent with this Report and Recommendation, be entered and that Kimberly D. Lerner, Esq. be appointed Referee to effectuate the sale of the Subject Property.

ECF 18-cv-3306, doc. 19 at 18–19.

The Plaintiff filed proof of service on July 9, 2019. It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-cv-1006 (ADS) (SIL) (reviewing Report and Recommendation without objections and for clear error).

Accordingly, the R&R is adopted in its entirety. The Plaintiff's motion for default judgment is granted in part and denied in part as recommended by the R&R. The Court selects Kimberly D. Lerner, Esq., as the referee. The Plaintiff is directed to submit a proposed judgment consistent with the R&R no later than fourteen days from the issuance of this order.

SO ORDERED.

Dated: Central Islip, New York

August 13, 2019

/s/ Artur D. Spatt

ARTHUR D. SPATT

United States District Judge